

**Re: CDE Proposed Revisions to CD****Sarah Flanagan** to: Sanoff, Robert

06/07/2011 09:05 AM

Cc: "Ettinger, Jonathan", Lulu Cheng, "Kautsky, Peter (ENRD)", "Evans, Rachel (ENRD)", "Gerson, Zachary"

From: Sarah Flanagan/R2/USEPA/US

To: "Sanoff, Robert" <RSS@foleyhoag.com>,

Cc: "Ettinger, Jonathan" <JEttinger@foleyhoag.com>, Lulu Cheng/DC/USEPA/US@EPA, "Kautsky, Peter (ENRD)" <Peter.Kautsky@usdoj.gov>, "Evans, Rachel (ENRD)" <Rachel.Evans2@usdoj.gov>, "Gerson, Zachary" <ZGerson@foleyhoag.com>

Robby - Thanks. Could you also send along a clean copy?

"Sanoff, Robert"**Confidential -- For Settlement Purposes Only Pe...****06/07/2011 08:59:43 AM**

From: "Sanoff, Robert" <RSS@foleyhoag.com>

To: "Kautsky, Peter (ENRD)" <Peter.Kautsky@usdoj.gov>, Sarah Flanagan/R2/USEPA/US@EPA, "Evans, Rachel (ENRD)" <Rachel.Evans2@usdoj.gov>, Lulu Cheng/DC/USEPA/US@EPA

Cc: "Ettinger, Jonathan" <JEttinger@foleyhoag.com>, "Gerson, Zachary" <ZGerson@foleyhoag.com>

Date: 06/07/2011 08:59 AM

Subject: CDE Proposed Revisions to CD

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Peter, Sarah, Lulu & Rachel -- We attach CDE's markup of your Consent Decree. We've turned the CD into a Word document and put our proposed changes in "Track Changes". We had some difficulty in getting rid of your headers, which may mean that the document is now a hybrid between WordPerfect and Word which may complicate your reading and editing it. If you can't read our changes, we can probably produce an old school Redline draft which shows the changes we propose.

CDE's comments are preliminary. We have not gotten final management sign-off yet (particularly on the language in the CD), so we reserve our right to make additional changes, but we are confident that CDE's management is interested in pursuing a deal along these lines.

We made economic changes both on the payments from CDE and the percentage share on the insurance recoveries: (1) we reduced CDE's total payments from \$4.4 million over two years to \$3.75 million over two years (without any interest for the installment payments) and (2) we have reduced the percentage shares as follows:

US CONSENT DECREE

	us	state	cde
allstate	90.00%	10.00%	0.00%
0-4m	90.00%	10.00%	0.00%
4 to 20	73.80%	8.20%	18.00%
20-50	69.30%	7.70%	23.00%

50-75	73.80%	8.20%	18.00%
75-100	75.60%	8.40%	16.00%
>100	76.50%	8.50%	15.00%

CDE PROPOSAL

	us	state	cde
allstate	90.00%	10.00%	0.00%
0-4m	90.00%	10.00%	0.00%
4 to 20	70.00%	6.50%	23.50%
20-50	68.00%	6.00%	26.00%
50-75	69.00%	6.50%	24.50%
75-100	74.00%	8.00%	18.00%
>100	75.00%	8.25%	16.75%

We have made several structural changes to your draft.

* We have made the consent decree a stand alone deal with only CDE, but expanded the covenant not to sue to apply to CDE's corporate affiliates to the extent the liability is derivative.

* We made CDE's funding obligation of the litigation escrow to commence on CDE's submission of a signature page since CDE does not want to continue to fund the litigation during what could be the lengthy approval process (at the same time any insurance recoveries during the approval process will count as Insurance Proceeds and paid when approval is final).

* We deleted the concept in your draft of one site vs multi-site settlements as too cumbersome and allowing for possible gerrymandering. Instead, we simply have a single pot of Insurance Proceeds however obtained which gets allocated based on the above-tables.

We have tried to simplify and clarify the definitions of Insurance Claims and insurance Proceeds which we believe makes the CD much clearer.

We look forward to hearing your preliminary responses on Friday.

Best regards,
Robby and Jon

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www.foleyhoag.com. [attachment "6-6-11 revision to cd - 3883587
v1 FHBOSTON.DOC" deleted by Sarah Flanagan/R2/USEPA/US]